IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No.3211 of 2005

State of Maharashtra,
through Police Station Officer,
Imambada, Nagpur. ...Applicant.

Versus

Naresh s/o Balwantrai Vora,
Aged about 50 years,
R/o 306, 17-B, Girnar Society,
Lokhandwala Complex,
Andheri (W),
Mumbai. ...Non-Applicant.

Coram : R.C. Chavan, J.
Dated : 22nd August, 2006

Oral Order :

1. By this application, the applicant-State seeks quashing and setting aside of the order dated 27/28-9-2005 passed in Misc. Criminal Application No.1453 of 2005 by the learned 2nd Ad hoc Additional Sessions Judge, Nagpur, and cancellation of anticipatory bail granted to the non-applicant by the said order.

2. The facts, about which, on the whole, there is no dispute, are as under :

On 25-4-2005, Nagpur Police found Tanker bearing registration No.MH-31-6611 near one Mohta Petrol Pump, Medical Square, Nagpur, in the process of unloading adulterent, namely industrial thinner, in one of the tanks in the petrol pump. Thereupon an offence was registered and investigation

commenced. It was revealed in course of investigation, and there is no dispute about it, that the tanker in question had left the factory of M/s. Shivnath Petro Chemicals Pvt. Ltd. at Rajnandgaon (Chhatisgarh) upon an order placed for the said industrial thinner by M/s. S.B. Vora & Co., Thane, of which the present non-applicant is the proprietor. The investigator seems to have smelt a conspiracy of diverting for adulteration of petrol the industrial thinner or other hydro carbons being transported from M/s. Shivnath Petro Chemicals Pvt. Ltd., for ostensibly being supplied to M/s. S.B. Vora & Co. Therefore, the non-applicant came to be shown as a prospective offender in the said crime. The non-applicant, therefore, approached the learned Additional Sessions Judge, who, by his impugned order, admitted the non-applicant to anticipatory bail by imposing necessary conditions.

3. The present application has been filed on behalf of the State in order to have that order quashed and set aside on the grounds that the order was arbitrary and reflects non-application of mind, that the material collected by the Investigating Agency *prima facie* indicates involvement of the non-applicant and that the Trial Court failed to consider that the non-applicant's Company was colluding with M/s. Shivnath Petro Chemicals Pvt. Ltd. for using industrial thinner in adulteration of petrol and diesel and that as many as 35 tankers have been despatched by M/s. Shivnath Petro Chemicals Pvt. Ltd. to the non-applicant's Company. It was stated that in order to unravel the conspiracy, the custodial interrogation of the non-applicant was necessary, which the Trial Court failed to see. In view of this, the State sought to have the order quashed and set aside.

4. On a notice, the non-applicant appeared and has filed a reply, in para 20 whereof at page 9, he has not disputed the fact that in the past the non-applicant had indeed booked 35 tankers of industrial thinner, which he had received and had been paid for by him. He had also stated in the same para at page 8 that on 21-4-2005, the order for the consignment, which led to registration of offence, was also placed by him. He also claimed to have informed M/s. Shivnath Petro Chemicals Pvt. Ltd. that the tanker had not reached him. In view of this, according to the non-applicant, the non-applicant has nothing to do with any conspiracy of adulteration in which M/s. Shivnath Petro Chemicals Pvt. Ltd. or others may or may not be engaged. It is further stated that the FIR is in respect of transportation of only one tanker, which was caught in the process of adulteration of petrol at Mohta Petrol Pump at Nagpur, investigation in respect of which is concluded. Therefore, according to the non-applicant, there is absolutely no case for cancellation of bail.

5. I have heard Shri A.B. Chaudhari, the learned Public Prosecutor for the applicant-State, as also Shri Anil Mardikar, the learned counsel for the non-applicant.

6. The learned counsel for the non-applicant submitted that the cancellation of bail and rejection of bail are required to be dealt with on different criteria, and once bail is granted, it should not be cancelled mechanically, without considering whether any supervening circumstances have rendered culprit's being on bail no longer conducive to a fair trial. For this purpose, he relied on a decision of the Supreme Court in the case of Dolat Ram and others v. State of Haryana,

reported in (1995) 1 SCC 349. The proposition, that bail once granted should not be cancelled unless any supervening circumstances rendered it no longer conducive for a fair trial without curtailing the freedom of the person so bailed out, would have to be followed while considering the present application. In the case of Nityanand Rai v. State of Bihar and another, reported in 2005(3) Supreme Today 354, the Supreme Court again considered the question of cancellation of bail. The Apex Court had observed that the grounds for cancellation of bail could be those which arose after grant of bail and should be referable to the conduct of accused while on bail.

7. The learned Public Prosecutor too drew my attention to a decision in the case of Puran v. Rambilas and another, reported in (2001) 6 SCC 338, where the Apex Court considered the question of cancellation of bail in respect of an accused, who was arrested in connection with bride burning. In that case too, the learned Additional Sessions Judge had granted bail and the High Court had set aside the said order. While upholding the order of the High Court, the Supreme Court observed that an order granting bail, ignoring the material and evidence on record, would be against the principles of law and that such a perverse order could be set aside. Therefore, according to the learned Public Prosecutor, there should be no legal difficulty for this Court in entertaining an application for cancellation of bail granted by the learned Additional Sessions Judge – whether regular or anticipatory. The contention of the learned counsel for the non-applicant that the case should be judged only on the basis of the material, which was available before the learned Additional Sessions Judge when he granted bail, has to be

rejected, principally, because of the observations in the two judgments, which he had relied on, namely that supervening circumstances would be relevant for considering cancellation of bail. In view of this, rather than going by whether the learned Judge was right or wrong in granting bail on the basis of material available to him, it would be appropriate to examine afresh whether the non-applicant is entitled to have his liberty protected or whether the needs of investigation demand that bail should be cancelled to enable the Investigating Officer to seek custodial interrogation.

8. Two other accused persons involved in the same crime in respect of same tanker found adulterating petrol at the Mohta Petrol Pump on the same day, had been admitted to anticipatory bail. They are Amit R. Jain and Harvindersingh Bhatia. The State had applied for cancellation of bail granted to these persons. Criminal Application No.2441 of 2005 in respect of Amit Jain was allowed by this Court, whereas that in respect of Harvindersingh Bhatia came to be rejected, implying that the requirements of investigation in respect of each person would have to be independently judged. Therefore, it would not be necessary to go through the orders passed by my two Brothers disposing of the two earlier applications in respect of two other accused.

8. The mainstay of arguments advanced by the learned Public Prosecutor for the applicant-State is that M/s. S.B. Vora & Co., owned by the non-applicant, is a facade for facilitating the movement of industrial thinner from M/s. Shivnath Petro Chemicals Pvt. Ltd. to petroleum outlets and that M/s. S.B. Vora & Co. places orders without actually receiving, or even intending to receive, the goods in

question, which are diverted to the said outlets. He submitted that M/s. S.B. Vora & Co. is not functional since long and the Investigating Machinery had collected necessary material to show that the Company premises are locked, there is no supply of water and electricity to the Company, and the Company has not been paying sales-tax. Therefore, there is no justification for the non-applicant's Company to require even one tanker of industrial thinner, which was ordered by it.

10. On the other hand, the learned counsel for the non-applicant states that the Company has filed sales-tax returns and is purchasing hydro carbons even from GAIL, and the inference drawn by the Investigating Officer that the Company is not functional is not correct. He further submitted that there is no question of the Company furnishing any 'end use certificate' in view of the notification of the Central Government dated 21-11-2001, which requires such a certificate in respect of 15 items appended to the Schedule. “Industrial thinner”, which was intercepted by the police authorities on the incidental night, was not one such substance. According to him, apart from this, the non-applicant's company is not only entitled to use the substance in an industrial activity carried out by the Company, but also has a licence to resale. Therefore, the question as to whether the Company has actually used up the solvent itself or has disposed it of elsewhere should not be relevant for the investigation of the crime in question. He also contended that the investigation seemingly revealed that M/s. Shivnath Petro Chemicals Pvt. Ltd. had been dispatching under the same invoice two different tankers – one legitimately meant to reach non-applicant's Company and the other probably for illegal purposes. Since all tankers ordered by his client were duly received, there was no

question of involvement of non-applicant in any conspiracy to adulterate fuels. He further submitted that the offence is in respect of one tanker, which was intercepted in the early hours of 25-4-2005 and in respect of which the non-applicant's Company has an explanation ready in the form of his letter to M/s. Shivnath Petro Chemicals Pvt. Ltd. that the tanker had not reached it. It would be difficult to accept this last contention raised by the learned counsel for the non-applicant, because if in every matter reported to the police the police were required to shut their eyes to whatever came to be noticed by them in course of investigation of that crime and restrict their investigation to the crime reported,, the entire object of having a police machinery in preventing crime would come to an end. In fact the First Information Report is just an information of what is noticed. It would set the Investigating Machinery into motion and would enable the investigator to unravel all the ramifications of the crime. It would be impermissible to expect the police to shut their eyes to larger conspiracy and restrict their investigation to one event, which may be only the tip of the iceberg.

11. Whether the solvent in question is one in respect of which the 'end use certificate' is required to be given or not, or whether the solvent in question is actually used in non-applicant's premises, or the non-applicant had the authority to resale the same is likewise irrelevant. The question is whether the solvent, which was ordered by the non-applicant's company, had been used for adulterating petrol at the petrol pump. So whether the substance in the tanker is covered by the notification issued by the Central Government or not, or, for all that matters, it was a plain water, if contents of the tanker are used for adulteration of

fuel, involvement of a Company would have to be probed.

12. Thus far even the learned counsel for the non-applicant has no quarrel. The question is about the nature of involvement of M/s. S.B. Vora & Co. in the activities, which had begun at the factory of M/s. Shivnath Petro Chemicals Pvt. Ltd. The learned Public Prosecutor submitted that both these Companies are in a conspiracy to get a solvent ordered in order to use it for adulterating petrol or other fuel rather than using it up in the non-applicant's Company or re-selling it elsewhere. Now this question would require a probe. The papers in respect of investigation shown to me by the learned Public Prosecutor indicate that the Company owned by the non-applicant is closed since long and non-functional. It would be necessary to find out if entire quantity of solvent received at non-applicant's factory is legitimately utilised or not. The non-applicant's contention that the Company is running, would, therefore, require investigation. It would be necessary for the non-applicant to explain as to what his Company is doing with big consignments of solvent/hydro carbons which the Company has been receiving from M/s. Shivnath Petro Chemicals Pvt. Ltd. and GAIL. Necessity of custodial interrogation of the non-applicant may, therefore, have to be considered by the competent Magistrate and, therefore, the anticipatory bail granted to the non-applicant would have to be cancelled and the non-applicant would have to be directed to surrender before the Investigating Officer.

13. On 19-8-2006, when the matter came up before me for hearing for the first time, the non-applicant was directed to remain present at the hearing of this application. His counsel states that he had attempted to contact the non-applicant

on telephone and had even sent a telegraphic message to the non-applicant asking him to remain present in the Court. The message must have been received in due course. Since, according to the learned counsel, the non-applicant is running a big Company, which is virtually ordering solvent worth lakhs of rupees frequently, the Company must be having a telephone or fax. Therefore, the non-applicant should have been able to communicate with his lawyer about the causes of his non-appearance today. Mumbai is well connected to Nagpur and had the non-applicant so desired, he chould have remained present today, considering his position as the owner of the Company, dealing in solvent worth lakhs of rupees. Therefore, his absence in the Court today is indeed enigmatic.

14. In view of the foregoing, the following order is passed :

The application is, therefore, allowed and bail granted to the non-applicant by order dated 27/28-9-2005 passed by the learned 2nd Ad hoc Additional Sessions Judge, Nagpur, is cancelled. The learned counsel for the non-applicant seeks stay of eight weeks. It would be sufficient if the non-applicant is directed to appear before the Investigating Officer on or before 22-9-2006. The learned Public Prosecutor states that even this four weeks' time need not be given. However, considering the fact that the non-applicant is on bail since last one year and claims to be the owner of a big Company, in order to allow him to appear before the Investigating Officer, time, which is granted, is appropriate.

JUDGE

pdl.